Supreme Court, U.S.
FILED

001732 MAR 13 2001

OFFICE OF THE CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

ROCKY M. CONTRERAS,
Petitioner,

v.

LOCAL 46, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, and BRETT OLSEN,
Respondents.

On Petition for a Writ of Certiorari to the Unites States Court of Appeals for the Ninth Circuit

---

PETITION FOR A WRIT OF CERTIORARI

Rocky M. Contreras
P. O. Box 493
Woodlake, CA 93286
(559) 972-7134

29 pp

QUESTIONS PRESENTED

Whether the Supreme Court of the United States is going to allow untenable evidence to be suppressed if there was a glimmer of light and clarity which would lead to justice and foremost the protection of the people and their constitutional rights.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

OPINIONS BELOW 1

JURISDICTION AND PERTINENT PROVISIONS 1

STATEMENT OF THE CASE 1

REASONS FOR GRANTING THE WRIT 12

CONCLUSION 13

TABLE OF AUTHORITIES

Cases **Page**

People v. Albert, 182 cal.app. 2d 729. 9
People v. Daniel, 105 cal. 262. 8
People v. Dupree, 156 cal. app. 2d 60 . . . . . .8, 9, 10
People v. Foote, 48, cal.2d 20 7
People v. Fisher, 208 cal. app. 2d 78 10
People v. Grace, 166 cal. app. 2d 68 9
People v. Goldberg, 144 cal.app. 2d 91 10
People v. Goldberg, 152 cal. app. 2d 562 10
People v. Hughes, 203 cal. app. 2d 598 11
People v. Jackson, 59 cal. 2d 375 8
People v. Jackson, 125 cal. app. 2d 776 8
People v. Ketchel, 59 cal. 2d 503 9
People v. Kulwin, 102 cal.app.2d 105 11
People v. McShannon, 177 cal. app. 2d 195 10
People v. Moore, 213 cal.app. 2d 160. 8
People v. Morse, 60 cal. 2d 631 9
People v. Porter, 105 cal. app. 2d 729 10
People v. Resoto, 58 cal.2d 304 8
People v. Sica, 112 cal. app. 2d 574 11
People v. Spencer, 60 cal.2d 64. 8
People v. Stephens, 177 cal. app. 2d 9
People v. Sweeney, 55 cal. 2d 27 11
People v. Vaughn, 155 cal. app. 2d 596 11
People v. Vetri, 178 cal. app. 2d 385 10
People v. Wojahn, 169 cal. app. 2d 135 . . . . . 9, 10
People v. Zuniga,156 cal. app. 2d 298 9

PETITION FOR A WRIT OF CERTIORARI

Rocky M. Contreras respectfully petitions for a writ of certiorari to review the order of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion and/or order of the court of appeals for the Ninth Circuit is reported Ninth Cir.R.27-7/Appendix A, General Orders for the Unites States Court of Appeals.

JURISDICTION AND PERTINENT PROVISIONS

The order of the court of appeals was entered on December 15, 2000. This Court has jurisdiction and Pertinent Provisions under U.S. Federal Rule #47.

STATEMENT OF THE CASE

This case involves untenable evidence suppressed which would lead to justice and foremost the protection of the people and their Constitutional Rights.

Plaintiff, strongly contends being that he is representing himself in this civil case and acting in his own behalf as counsel, in counsels judgment, one or more of the situations described in purpose section exist, being, both number (1) and (3) further more, plaintiff is petitioning the U.S. Supreme Court for rehearing en banc being in accordance to grounds for suggesting en banc

consideration being, number (2) and (3) plaintiff in his own motion to appeal strongly contends that justice has not even come close to being obtained and/or served in this civil case, in accordance to the full extent of the law of which goes along with our nation's constitution and in accordance to principle, fair play, proper procedure and fact.

Plaintiff requests that the Supreme Court of the United States over turn and/or reconsider the decision and/or order filed December 15, 2000 by Tortt, Graber, and McKeown, Circuit Judges for the United States Court of Appeals for the Ninth Circuit. These three (3) Judges have made an erroneous judgment against this civil case and the Plaintiff which the Plaintiff contends was influenced and looked at with bias due to the many violations which were not even acknowledged and/or mentioned by the U.S. Court of Appeals. These three (3) Judges failed to acknowledge that the Plaintiff was not in compliance with the court procedures, being: The color of the cover of Brief and/or reference to the violation of Circuit Rule 32(e); frap 32(a)(7)(B) and (C) and/or the Brief not being typed and/or appropriately spaced. Furthermore, these same Judges failed to mention that the Plaintiff did not send the proper amount of copies which were supposed to be submitted along with the original Brief. Therefore, the Judges failed again to be in compliance to the Court's guidelines. Plaintiff contends that despite the plaintiff's violations of the court's guidelines and procedures the Court chose not to document and/or to take note of the plaintiff's mistakes due to the three (3) Judges already having made a pre-judgment against the Plaintiff and this civil case. The

court chose not to take note of their own behavior toward the Court's Guidelines as if there was a hidden agenda against the Plaintiff therefore violating U.S. District Court Local Rule, General Rule #9 and in doing so has compromised the trust and has violated the very meaning of due process in regard to the Judgment. Which has raised doubt that there was a non biased decision and/or judgment of the Court which goes by the Guidelines of a fair trial and/or hearing which is the Plaintiff's Constitutional Right.

Plaintiff believes that he was, and/or is confronted with bias by the Lower Court and now the U.S. Court of Appeals, due to the very fact that the Plaintiff can not afford Counsel and is not able to represent himself in a very professional manner. Being that the Plaintiff has had to hand write his motions, notice of filings, etc...etc.. to both the U.S. District Court and also to the U.S. Court of Appeals, all due to financial hardships which is and/or are all part of the damages which the Plaintiff mentions in the original Complaint against the defendants dated December 15, 1998 and/or filed December 15, 1998 which was originally docketed into the U.S. District Court, District of Arizona. Furthermore, the Plaintiff is crying foul that the three (3) Circuit Judges were capable of ignoring Plaintiff's motion to permanently lift the time schedule. These Judges did not even mention this motion in their decision and/or order dated December 15, 2000, again in violation of U.S. Local Rule, General Rule #9 for the Lower Court.

Also, Plaintiff contends that the defendants are attempting to hold hostage an erroneous ruling and/or

order of the U.S. District Court, Western District of Washington. Judge Coughenour of the Lower Court was in violation of U.S. Local Rule, General Rule #9 due to bias being that he dismissed this civil case due to reasons which were out of the Plaintiff's control. Plaintiff does not have control over the U.S. mail service or over a mix up of lost and/or construed Notice of Deposition which the Plaintiff claims to have never received via the U.S. mail. Therefore, the Plaintiff was not able to attend the Deposition in Arizona due to the fact that the Plaintiff never received this notice to attend this proported/alleged scheduled Deposition. Also, Judge Coughenour of the 'Lower Court' U.S. District Court, Western District of Washington, rather than re-schedule a second (2nd) non biased deposition in the State of Arizona due to the fact that the first (1st) deposition was construed, Judge Coughenour violated U.S. Local Rule, General Rule #9 by taking a biased approach and/or attitude against the Plaintiff by requesting the Plaintiff to attend a deposition in the State of Washington. Judge Coughenour of the Lower Court, fully knowing that the Plaintiff filed this civil suit against the Defendants through forma pauperis meaning that the Plaintiff is and/or was financially broke and was not able to make such a venture to the State of Washington. Also, Plaintiff contends that he did document violations of general Rule #9 being prohibition of bias. Due to the behavior of Judge Coughenour of the lower court towards this Plaintiff which was in violation of U.S. District Court, Local Rule General Rule #9 and which did show bias and dislike toward the Plaintiff. This can be found in the supplemental excerpt of record under Number # 45 which was a motion to recuse due to bias/prejudice directed to the plaintiff by the Judge of this

court. The charges against the defendants are real and of which has plagued and tormented me since the original National Labor Relations Board charge was filed against the defendants dated; Dec. 16, 1996 and which I have been a victim to on every union job that I have worked on in every state which I have worked in being: Washington, Oregon, California and Arizona up to present date due to the discrimination and defamation of my character by the defendant which has permanently blackballed and/or blacklisted me on every IBEW Union Hall and also on every union job and I believe will continue to plague me for as long as I live and/or until I am judicially redeemed again. Plaintiff strongly contends that this type of civil case and the issues surrounding it are such that the time schedule must be lifted due to the gravity of the evidence against the defendants being untenable[1] furthermore, it would be criminal if the defendant is allowed to get away with perjuring themselves by out right lying to three (3) federal court in three (3) separate states being: United States District Court, District of Arizona; Unites States District Court, Western District of Washington; and the United States Court of Appeals for the Ninth Circuit, in their denial of these charges against them furthermore dated 09/16/00 at 0700 hours I was at the location of South Railroad, Eigth Avenue in San Mateo, California putting quarters in the parking meter when I was fired upon. An unidentified person fired a gun at me. I heard

---

[1] Under supplemental excerpts of record plaintiff documented Bias/Prejudice directed to the plaintiff by the judge of the United States District Court Western District of Washington dated 29th day of November 1999. Pursuant to 28 U.S.C. #144. Also note: numbers #43, #55, #56, #57, #58 and #61.

the gun shots whizz past me as I quickly moved running for cover, 8 to 9 shots were fired. The attempt on my life is in relationship to the International Brotherhood of Electrical Workers' Union Hall at 302 Eighth Avenue. The Union Hall is a short block west of my location dated 09/16/00. Plaintiff strongly contends that he is in danger of retaliation by the IBEW Union and/or its associates. This incident was reported to the San Mateo Police Department, Report no # 00-0916-026, Reporting Officer, Officer S. Blick, Badge No. #81. Plaintiff believes that this attempt on my life was arranged by the IBEW Union and/or its associates. Again, there is untenable evidence which weighs against the defendants. This evidence is enormous therefore in the name of justice please lift the time schedule as plaintiff did request in his motion to the United States Court of Appeals for the Ninth Circuit prior to the motion having been construed as a motion for an extension of time by the Ninth Circuit.

Plaintiff filed a motion to lift the time schedule due to the fact that the evidence in this civil case is enormous being that it spans through a time limit of almost six (6) years likewise the evidence has also been gathered to present day.

Plaintiff asks for mercy in regard to this civil case due to the evidence which would clarify this argument. Plaintiff asks for justice to be served and that the audio tapes be submitted as evidence against the defendants. The plaintiff was prevented from submitting the meat of his evidence due to the dismissal in the lower court and also was prevented in the Ninth Circuit Court of Appeals due to bias. Note: plaintiff did receive a sealed envelope

from the N.L.R.B. of Region #19 2948 Jackson Federal Building, 915 Second Avenue, Seattle, Washington 98174-1078 regarding IBEW Local 46 Case 19-CB-8000. There is an audio tape relative to the investigation.

Plaintiff asks that the evidence against the defendants not be suppressed but be heard in the hope of arriving to justice in the Supreme Court. U.S. Federal Rule #47 reference to "State Court" and "State Law" plaintiff has untenable damaging evidence in order to impeach the defendants therefore, plaintiff is making a motion to make a written transcript of the three (3) audio tapes. A sound recording of a conversation or of the statement of a witness or of the defendant is admissible where such conversation or statement is otherwise competent in view of the fact that sound recordings may contain matters not admissible or may be entirely inadmissable.[2] The adverse party should be given the opportunity to hear the recording or otherwise be informed as to its contents, as by typed transcription thereof, before the recording is played in the presence of a jury see (People v. Foote, 48 cal.2d 20). In note 9 on page 80 that it - "Might ordinarily be the better practice...for the trial court to listen to such recordings before playing it to the jury in order to rule in advance on objections to their completeness, accuracy, or intelligibility..." A proper foundation for the

---

[2] Plaintiff, Rocky M. Contreras contends that the F.B.I., C.I.A., Secret Service, A.T.F. and many various other agencies ranging from federal, states, county and city authorities have used audio, sound recordings to fight evil. Therefore, the plaintiff's sound recordings must be admissible in order to arrive to clarity in the endeavor of searching for truth and justice.

playing of a sound recording is laid where the recording is identified as a fair and accurate reproduction of the conversation and the voices upon the recording are also identified (People v. Resoto, 58 cal.2d 304; People v. Jackson, 59 cal.2d 375; People v. Jackson, 125 cal. app.2d 776; People v. Dupree, 156 cal. app. 2d 60). See also People v. Spencer, 60 cal.2d 64 wherein the court in footnote 5 sets forth a verbatim report from the trial transcript of the foundation presented for the introduction of a sound recording as an "adequate foundation". The fact that a sound recording may not be clear in it's entirety does not render it inadmissible since a witness may testify to a part of a conversation of that is all he heard and the part heard appears to be intelligible, if the part not heard by the witness or not clear on the sound recording. Would in any respect modify or explain the part the part testified to, or appearing on the recording the defendant has the opportunity to present such clarification (People v. Daniel, 105 cal. 262; People v. Dupree, 156 cal. app.2d 60). Where, because of a mechanical malfunction, only portion of a conversation was recorded, the sound recording was held to be admissible where the unrecorded portions of the conversation were testified to by an officer who overheard the entire conversation (People v. Moore, 213 cal. app. 2d 160). A sound recording is admissible which presents a Lucid Reproduction of a conversation and where the portions which are unintelligible do not affect the general tenor of the conversation (People v. Wojahn, 169 cal.app. 2d 135). A sound recording which is partially inaudible is also admissible (People v. Jackson, 125 cal.app. 2d 776; People v. Resoto, 58 cal.2d 304).

A re-recording on tape of a conversation on a wire

recording is admissible where the original recording is played before the trier of fact to demonstrate the accuracy of the reproduction (People v. Wojahn, 169 cal.app. 2d 135). Upon proper foundational proof of it's accuracy, a written transcription of a sound recording is admissible as evidence of the conversation "since recordings or the written transcript of them are more reliable and satisfactory evidence than testimony of conversations given from memory by those who overheard them" (People v. Morse, 60 cal.2d 632; People v. Ketchel, 59 cal.2d 503; see also People v. Albert, 182 cal. app. 2d 729; People v. Stephens, 177 cal.app. 2d 653; People v. Wojahn, 169 cal. app. 2d 135).

The accuracy of a written transcript of a sound recording may be established by the testimony of a person who heard the original conversation that the transcript of the recording accurately reflected the discussion (People v. Ketchel, 59 cal. 2d 503). The accuracy of a written transcript of the sound recording may also be determined by the trial judge after a comparison to the dictum in People v. Ketchel, 59 cal. 2d 503 at 518.

Where a defendant denies he confessed it is proper to play a sound recording of the conversation for impeachment to prove that the defendant's voice appears on the recording, and to prove that the recording was not "dubbed" (People v. Grace, 166 cal. app. 2d 68).

A sound recording of a conversation with a third person held outside the defendants presence is admissible for the purpose of showing the defendant's response to the accusatory statements contained therein (People v. Zuniga,

156 cal.app. 2d 298).

The fact that a sound recording is made without the defendant's knowledge does not affect it's evidentiary value where the accuracy of the recording is established (People v. Dupree, 156 cal.app. 2d 60).

Where a person is invited onto the defendant's premises and where the defendant know that anything he might say could be repeated, a wire sound recording of the conversation is not illegally obtained. The entry was not a trespass; the entry does not become a trespass because the person going on the premises may have been alerted to hear and record damaging declarations (People v. Goldberg, 144 cal. app. 2d 91; People v. Goldberg, 152 cal. app.2d562; People v. Wojahn, 169 cal. app. 2d 135; see also People v. Vetri, 178 cal. app. 2d 385; People v. Porter, 105 cal. app. 2d 729).

A recording of a telephone conversation made by means of an induction coil is admissible where the recording was made with the consent of a police informer who was a party to the conversation (People v. McShannon, 177 cal. app. 2d 195; People v. Fisher, 208 cal. app.2d 78).

A sound recording made by means of a hidden microphone in the sheriff's office of an accused's conversation with his wife and daughter was to be admissible where the wife and daughter were aware that the conversation was being recorded. The fact that the accused was unaware that this voluntary statements were being recorded did not render the evidence inadmissible

(People v. Hughes, 203 cal.app. 2d 598).

Where a confession is tape-recorded the objection that such sound recording is not the best evidence and that the testimony of a witness who heard the confession is the best evidence was held to be untenable in People v. Vaughn, 155 cal. app.2d 596.

Where a witness testified that he heard a conversation and the conversation was also recorded on a sound recording an objection to the testimony of the witness on the grounds that the recordings were the best evidence was held untenable (People v. Kulwin, 102 cal. app.2d 104; People v. Sica, 112 cal. app.2d 574; People v. Sweeney, 55 cal.2d 27).

Furthermore, the plaintiff contends that there are three (3) (cassette recordings) as evidence against the defendants in the civil case. The first (1st) tape was rendered to the United States Government National Labor Relations Board. Region #19 of 2948 Jackson Federal Building, 915 Second Avenue, Seattle, Washington, 98174-1078 dated December 16, 1996 and an Affidavit/ letter from Joyce K. Lauritsen, a supervisory examiner of the National Labor Relations Board Region #19 dated May 22, 1998. Furthermore, the audio tape was placed in the Regional Office safe where it was sealed and protected as it is today in the plaintiff's possession as it was when it was sent to me via "registered mail" sealed and protected. The manila envelope which the National Labor Relations Board sent with the "Audio Tape" to the plaintiff has never been molested and/or tampered with. Therefore, the "Audio Tape" has remained sealed and protected since

December 16, 1996 and awaits an "order" to take this evidence to a place of business being a licensed transcriber for written transcriptions in order to arrive to justice.

Also, there are two (2) more "Audio Tapes" sound recordings which will be used as evidence against the defendants which were submitted to the United States Government, National Labor Relations Board Region #20 of 901 Market Street, Suite #400, San Francisco, California 94103-1735 in July of 2000 which is also evidence against the defendants in this civil case furthermore there are many more articles and/or documentation and a map and/or diagram as evidence against the defendants. Please, in the name of justice, do not allow this evidence to be suppressed and/or withheld.[3] Furthermore there are witnesses which will testify in regard to this civil case

REASON FOR GRANTING THE WRIT

This case addresses the issues of untenable evidence which would lead to justice and the protection of people and their Constitutional Rights.

---

[3] "Is the Supreme Court to the United States going to allow untenable evidence to be suppressed if there was a glimmer of light and clarity which would lead to justice and foremost the protection of the people and their constitutional rights?"

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Dated: May 14, 2001

ROCKY M. CONTRERAS
Plaintiff/Appellant
P. O. Box 493
Woodlake, CA 93286
(559) 972-7134